

REMARKS/ARGUMENTS

Claims 1, 2, 4, 5, 8-10, 30-32, and 35-37 are now pending in this application. Claims 1 and 30 are independent claims. Claims 1, 4, 30, and 32 have been amended. Claims 3, 6, 7, 11, 33, 34 and 38 have been cancelled. Claims 12-29 and 39-45 were previously withdrawn pursuant to the Restriction Requirement dated September 10, 2004.

Drawings

The drawings were objected to under 37 CFR 1.83(a). (Office Action, Page 2). Claims 11 and 38 have been cancelled, thereby obviating the objections under this section.

Claim Rejections – 35 USC § 112

Claims 1-5, 8-11, 30-32 and 35-38 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (Office Action, Page 3). Claims 1, 30, and 32 have been amended thereby obviating the rejections under this section.

Claim Rejections – 35 USC § 102

Claims 30-31 were rejected under 35 U.S.C. § 102(b) as being anticipated by Chen USPN: 6,290,115 (hereinafter: Chen 115). Applicants respectfully traverse these rejections.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *W.L. Gore & Assocs. v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Further, “anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Independent Claim 30 includes elements that have not been disclosed, taught or suggested by Chen 115. Claim 30 recites:

“means for hindering the nail from advancing if the advancing nail is misaligned.”

Chen 115 discloses a pusher plate (22) mounted within a magazine (16) of a nail gun. (Chen 115, Column 2, Lines 33-48). The pusher plate functions to push nails in the magazine towards the barrel (14) of the nail gun. (Chen 115, Column 2, Lines 33-48). The pusher plate is pivotally mounted within the magazine and operably coupled with a button (26). (Chen 115, Column 2, Lines 33-59). When a user presses the button (26), the pusher plate may be pivoted out of the magazine, thereby allowing a user easier access to nails within the magazine. (Chen 115, Column 2, Lines 33-59). This allows for easier removal of nails if the nails become jammed within the magazine. (Chen 115, Column 2, Lines 33-59). However, nowhere in Chen 115 is there any discussion of means for hindering a nail from advancing within the magazine. In contrast, in the present invention, structure is discussed which will hinder a nail from advancing within the magazine if the nail is improperly positioned. (Present Application, Pages 11-12, Paragraph 0024). For example, if a nail engages with the pivoting probe assembly in an improper orientation, the pivoting probe assembly will contact a lock ledge, which will hinder further advancement of the nail within the magazine. (Present Application, Pages 11-12, Paragraph 0024). Nowhere in Chen 115 is such structure either disclosed, taught or suggested.

Therefore, based on the above rationale, it is contended that Chen 115 does not teach, suggest, or disclose the above-referenced elements of Claim 30 of the present application. Under *Lindemann*, a prima facie case of anticipation has not been established for Claim 30. Thus, independent Claim 30 should be allowed. Dependent Claim 31 (which depends on independent Claim 30) should also be allowed.

Claim Rejections – 35 USC § 103(a)

Claims 35 and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen 115 in view of Chen USPN: 6,431,428 (hereinafter: Chen 428). Claim 36 was

rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen 115 in view of Wohlwend et al. USPN: 6,685,078 (hereinafter: Wohlwend). Claim 38 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen 115 in view of Shkolnikov et al. USPN: 6,739,490 (hereinafter: Shkolnikov). It is contended that the Claims rejected under this section depend on independent Claim 30 which is non-anticipatory and non-obvious based on the rationale above. Thus, dependent Claims 35-38 (which depend on independent claim 30) should be allowed.


Allowable Subject Matter

Claims 1-5, 8-11 and 32 were cited by the Patent Office as being allowable if rewritten to overcome the above-discussed rejections under 35 U.S.C. § 112, 2nd Paragraph. Amendments have been made addressing said rejections and, as discussed above, said amendments are believed to have obviated the rejections under 35 U.S.C. § 112, 2nd Paragraph. Therefore, the above-referenced claims are believed allowable.

CONCLUSION

In light of the forgoing, reconsideration and allowance of the pending claims is earnestly solicited.

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